

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEW MEXICO**

**MAXIMINIO JUDE BACA,**

Petitioner,

vs.

No. CIV 1:98-363 LH/LCS

**UNITED STATES OF AMERICA,**

Respondent.

**MAGISTRATE JUDGE'S PROPOSED FINDINGS  
AND RECOMMENDED DISPOSITION**

**PROPOSED FINDINGS**

Petitioner Maximinio Jude Baca ("Baca") is an incarcerated individual who filed this petition under 28 U.S.C. § 2255. In May of 1995 he was convicted of trafficking in Marijuana pursuant to a plea agreement. Because of the substantial assistance he provided to the government, he was sentenced in December of 1997 only to time served; unfortunately, his conviction resulted in a parole revocation on an unrelated 1979 criminal conviction. Having to serve an additional four years while well known as a snitch has made Baca reconsider his decision to plead out; he seeks to set aside the plea agreement on the grounds that he was not aware (and not informed) that his conviction could also result in a parole revocation.

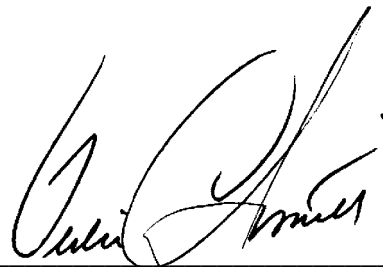
In its answer, the United States produced a copy of the plea agreement and transcripts of both the plea and the sentencing hearing. They establish that Mr. Baca's plea was freely and voluntarily made; that both the assistant U.S. attorney and his own defense counsel asked the judge to take into account, in determining an appropriate sentence for his 1995 drug trafficking

case, the possibility that his parole would be revoked in the 1979 case; and that the presiding Judge specifically mentioned the possibility of the parole revocation as a factor in sentencing Baca to 2 ½ years time served in a case where the sentencing range was 30 years to life imprisonment.

The transcripts conclusively refute Baca's claims that he was not informed of the possibility that his parole would be revoked. While his plight is unfortunate, in this case the actions of the prosecution, the judge, and his defense counsel were above reproach.

### **RECOMMENDED DISPOSITION**

I recommend that the Petition be denied. Within ten days after receiving a copy of the Proposed Findings and Recommended Disposition a party may, pursuant to 28 U.S.C. Sec. 636(b)(1), file written objections to them. A party must file any objections within the ten day period if that party desires appellate review. If no objections are filed, no review will be conducted.

A handwritten signature in black ink, appearing to read 'Leslie C. Smith', is written over a horizontal line.

LESLIE C. SMITH  
UNITED STATES MAGISTRATE JUDGE